IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11407 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RUTU AUTO GAS PVT LTD

Versus

UNION OF INDIA

Appearance:

MR VIJAY H PATEL for Petitioners
MR AKSHAY H MEHTA for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 23/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.R.TRIPATHI)

1. Rule. Mr. M.R. Shah, learned Advocate, appears and waives service of Rule on behalf of respondents.

2. The present petition is filed against the notice bearing F. No. VIII/48-7/LPG/ACC/2000 dated 24/10/2000 issued by respondent no.2 wherein it was stated that "it appears that conversion of a vehicle for facilitating its operation by LPG is prohibited as per Section 52 of the Motor Vehicle Act, 1988. Therefore, the parts of LPG Conversion kits under importation appears to be liable for confiscation under section 111 (d) of the Customs Act, 1962."

3. An affidavit-in-reply is filed on behalf of respondent no.2 wherein it is submitted in para-4 that earlier use of LPG was totally prohibited under section-52 of the Motor Vehicles Act, 1988. However, section-52 of the Motor Vehicles Act, 1988 has been amended by the Motor Vehicles Amendment Act, 2000 (27/2000) dated 14/8/2000 and as per new provision of section-52, LPG has been included in the list of legal source of energy, but LPG being explosive and hazardous, the fitment of conversion kit is subject to the specifications, conditions for approval retrofitment and other related matters for such conversion kit as prescribed by the Central Government. Thereafter, it is stated in the Affidavit in reply in para-5 that "though necessary changes have been incorporated in the Motor Vehicles Act empowering Central Government to lay down rules for use of LPG conversion kit, but the rule is not yet notified". It is further stated in the Affidavit in reply that the rules are likely to contain the specification/standard of LPG conversion kit, an authority to approve the kit and kit manufacturer/importer. It is also submitted that merely because section-52 of the Motor Vehicles Act, 1988 is amended, it automaticaly does not allow use of LPG kit in a motor vehicle unless and untill rules are framed by the Central Government. The Affidavit in reply then proceeds to state that the use of conversion kit for the purpose of use of LPG in the Motor Vehicle is not legal and permissible. After reiterating some earlier averments, the Affidavit in reply then proceeds to state that if under any other law, use of LPG conversion kit is prohibited then such goods are liable for confiscation as per the provision of section-111(d). It may be noted that the authority has misdirected itself in relying upon the provision made in clause (d) of section-111 of the Customs Act which reads as under :

"Section 111(d) :
Confiscation of improperly imported goods etc. -- The following goods brought from a place outside India shall be liable to confiscation :-

(a) - -
(b) - -
(c) - -
(d) any goods which are imported or attempted to be imported or are brought within the Indian Customs Waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;"

4. The submission is that the conversion kits which are imported by the petitioner are likely to be used in motor vehicles and such use of conversion kits in motor vehicles is prohibited under section-52 of the Motor Vehicles Act.

5. Perusal of clause (d) of section-111 makes it very clear that words referred to in the said clause is that there must be prohibition on import under any other law for the time being in force and not of the possible use of something which is sought to be imported by the importer. In the present case, it is mentioned by the petitioner that the conversion kit which is sought to be imported can be used in gas generators and marine vehicles which are not motor vehicles within in the meaning of section-2 of 28 of the Motor Vehicles Act, 1988.

6. Mr. Shah is not able to point out any provision under which the import of such LPG conversion kit is prohibited. Mr. Shah submitted that the intention of the authority in not clearing the consignment is only that the said LPG conversion kit is not used in motor vehicles. Howsoever good may be the intention of the department, the same cannot be upheld in absence of a specific provision authorising the Act of not clearing the import of the LPG conversion kit.

7. In light of the fact that Mr. Shah is not able to point out any specific provision under which the import of such kit is prohibited, there is no question of upholding the action of the department of issuing the notice dated 24th October, 2000. Mr. Shah has also produced a copy of the letter dated 17th November, 2000

written by Senior Technical Officer (TU) to the Commissioner of Customs, Customs House, Navrangura, Ahmedabad, wherein it is stated that "Meanwhile, you are requested to clear the consignment under provisional assessment taking an ITC bond". Looking to the facts and circumstances of the case, as there is no dispute regarding assessment of the duty, there is no question of even clearing the consignment on provisional assessment taking an ITC bond.

8. In the result, the petition is required to be allowed and the same is allowed. The notice bearing No. F. VIII/48-7/LPG/ACC/2000 dated 24th October, 2000, is hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

(B.C. Patel, J.)

(R.R. Tripathi, J.)

kamlesh*